IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5889 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KALIMKHAN CHIRAGHASSAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5889 of 2004

MS KRISHNA U MISHRA for Petitioner No. 1

MR RC KODEKAR, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 24/09/2004

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social

Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 13-4-2004 passed by the Police Commissioner, Ahmedabad City, and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Heard learned advocate for the petitioner and the learned AGP for the State. Also perused the record. Learned advocate for the petitioner has concentrated his argument mainy on the point of judicial custody. It is submitted that the two prohibition cases were registered against the detenu out of which one was with Gomptipur Police Station and the other with Vatva Prohibition Station. Drawing my attention towards Annexure-B (page 24), it is contented that when the order of detention was passed, the detenu was in judicial custody in the second offence which aspect ought to have been considered by the authority while passing the detention order. In this connection, she has drawn my attention towards the case of Amritlal and Others Vs. Union Govt. Through Secy., Ministry of Finance and Others, 2001 SCC (Cri) 147 wherein it was held at Head note as under:

> "Preventive Detention--Detention order-Subjective satisfaction--Detenu already in jail-Detaining authority must be satisfied on the basis of available cogent material about likelihood of the detenu being released on bail and not merely about likelihood of his moving application for bail--In absence of such satisfaction detention order cannot be sustained--Prevention of Illicit Traffic in Narcotic drugs and Psychotropic Substances act, 1988, S.3(1)"

4. It seems that there is non-application of mind on the part of detaining authority as detenu was in judicial custody in the second offence when the impugned order of detention was passed and hence, in view of the judgment rendered in Amritlal (supra), the continued detention of the detenu is illegal and the same cannot be sustained.

5. The petition is allowed. The impugned order of detention dated 13-4-2004 passed against the detenu Kalimkhan Chiraghassan Pathan is hereby quashed and set aside. The detenu is ordered to be set at liberty

forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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